

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
THE COMMONWEALTH OF PUERTO RICO, *et al.*
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

**INFORMATIVE MOTION OF THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO REGARDING ORDER DIRECTING THE OVERSIGHT
BOARD TO FILE AN AMENDED ORDER ESTABLISHING PROCEDURES AND
DEADLINES CONCERNING OBJECTIONS TO CONFIRMATION AND DISCOVERY
IN CONNECTION THEREWITH**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Judge Laura Taylor Swain:

Pursuant to the Court’s *Order Directing the Oversight Board to File An Amended Confirmation Procedures Order* [ECF No. 17362] (the “July 15 Order”), the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”), the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), and the Puerto Rico Public Buildings Authority (“PBA,” and together with the Commonwealth and ERS, the “Debtors”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² respectfully states as follows:

PROCEDURAL BACKGROUND

1. On May 13, 2021, the Debtors filed their *Motion for An Order Establishing, Among Other Things, Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith* [ECF No. 16757] (the “Confirmation Procedures Motion”). Attached as Exhibit A to the Confirmation Procedures Motion was a proposed order setting forth procedures and deadlines requested in the Confirmation Procedures Motion.

2. On June 15, 2021, Peter Hein [ECF No. 16909], the Official Committee of Retired Employees [ECF No. 16991], the DRA Parties³ [ECF No. 16997], Ambac Assurance Corporation and Financial Guaranty Insurance Company [ECF No. 16998], the Puerto Rico Fiscal Agency and Financial Advisory Authority [ECF No. 17014], and the Official Committee of Unsecured Creditors [ECF No. 17017] filed responses or objections to the Confirmation Procedures Motion (collectively, the “Confirmation Procedures Objections”).

² PROMESA has been codified at 48 U.S.C. §§ 2101-2241.

³ The “DRA Parties” collectively refers to AmeriNational Community Services, LLC, as servicer for the GDB Debt Recovery Authority, and Cantor-Katz Collateral Monitor LLC.

3. On June 29, 2021, the Debtors filed a reply in support of the Confirmation Procedures Motion [ECF No. 17189] (the “Confirmation Procedures Reply”). Attached as Exhibit 1 to the Confirmation Procedures Reply was an amended proposed order that made various changes in response to points raised in certain of the Confirmation Procedures Objections.

4. On July 13 and 14, 2021, the Court heard oral argument on the Confirmation Procedures Motion, and issued an oral ruling at the close of oral argument on July 14, 2021. The day after conclusion of oral argument, the Court issued the July 15 Order.

5. In the July 15 Order, the Court directed the Oversight Board to “incorporate[] the Court’s oral rulings” (*see* July 15 Order at 2) and to “include the [Court’s] suggested timetable” (*id.* at 4) in a revised, proposed confirmation procedures order.

AMENDED PROCEDURES ORDER

6. In compliance with the July 15 Order, the Debtors hereby submit an amended proposed confirmation procedures order (the “Amended Procedures Order”) attached hereto as **Exhibit A**. As directed by the Court, the Amended Procedures Order incorporates the Court’s oral rulings, as itemized in the July 15 Order, and sets forth a schedule that complies with the timetable provided in the July 15 Order.

7. After reviewing the Court’s timetable, the Debtors had some remaining questions regarding the schedule contemplated by the July 15 Order. The Debtors respectfully request that the Court either provide further instructions to the Debtors to supplement the proposed Amended Procedures Order, or further amend the Amended Procedures Order to provide guidance on additional issues.

8. *First*, the July 15 Order provides that Eligible Creditors⁴ must file a notice of intent to object to confirmation of the Plan (an “Objection Notice”) no later than August 3, 2021, or seven (7) days after notice to Eligible Creditors of the discovery schedule, whichever is later (the “Objection Notice Deadline”). *See* July 15 Order at 5. However, under the current schedule, notice of the discovery schedule will not be sent to creditors until they receive the Confirmation Hearing Notice, which will not be mailed until five (5) business days following the Court’s entry of the Disclosure Statement Order on or after July 27, 2021. *Id.* at 2 ¶ 1. If the Court enters the Disclosure Statement Order on July 27, 2021, then service of the Confirmation Hearing Notice would not be completed until August 3, 2021, which would result in the Objection Notice Deadline being August 10, 2021, four (4) days after creditors’ first discovery deadline to serve initial requests for production of documents. To avoid this issue, the Debtors propose serving a separate discovery notice attached hereto as **Exhibit B** (the “Discovery Notice”) by U.S. mail on all creditors within five (5) Business Days, or as soon as practicable thereafter,⁵ of entry of the Amended Procedures Order, along with a copy of the Amended Procedures Order as entered, a Spanish translation of the Discovery Notice, and a Spanish translation of the Amended Procedures Order as entered. This will facilitate creditors receiving earlier access to the Plan Depository, receiving notice of the discovery schedule well before the first deadline, and providing creditors with approximately ten (10) days’ advance notice of the Objection Notice Deadline of August 3,

⁴ Capitalized terms not defined herein shall have the meaning ascribed to them in the Amended Procedures Order.

⁵ Given the volume of creditors in these Title III cases (approximately 1.4 million) and the need to obtain Spanish translations of the entered Amended Procedures Order and Discovery Notice, including any revisions thereto, there may be unanticipated delays in serving the Amended Procedures Order and Discovery Notice. The Debtors will obtain Spanish translations of the entered Amended Procedures Order and Discovery Notice on an expedited basis.

2021. Accordingly, the proposed Discovery Notice provides that the Objection Notice Deadline is August 3, 2021.

9. *Second*, the July 15 Order provides Objections to confirmation of the Plan are due on October 19, 2021, and the Debtors' replies to Objections to confirmation of the Plan are due on October 25, 2021, six (6) days later. *See* July 15 Order at 6. Notably, the July 15 Order provides Debtors shall file their Proposed Initial Findings of Fact and Conclusions of Law on the same date. *Id.* The Debtors respectfully request a modest extension of their time to file replies to Objections from October 25, 2021 to October 29, 2021. This change would not alter any other deadlines in the schedule set forth in the July 15 Order.

10. *Third*, the July 15 Order states all parties shall file final exhibit lists and deposition designations by October 22, 2021. However, it does not provide any deadlines for parties to serve counter-designations, objections to deposition designations, or objections to exhibit lists. The Debtors' understanding is the Court will issue a further order to address these and other deadlines.

11. *Fourth*, the Court stated in its oral remarks that rebuttal expert reports shall be due on October 4, 2021. *See* Hrg. Tr. 99:6-7 ("[R]ebuttal expert reports shall be due on October 4, 2021."). Although the July 15 Order (at 6) provides for all parties "to serve rebuttal expert disclosures" by October 4, 2021, there is no corresponding deadline in the July 15 Order for the filing of rebuttal expert reports. The Amended Procedures Order and the Discovery Notice contain placeholders for the Court to enter a deadline by which all parties shall file rebuttal expert reports.

12. *Fifth*, the July 15 Order does not state whether the Confirmation Hearing will take place telephonically, virtually, or in person. The Debtors respectfully request the Court provide guidance as to the format of the Confirmation Hearing when it is in the position to do so.

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WHEREFORE, the Debtors respectfully request that the Court enter the Amended Procedures Order substantially in the form attached hereto as Exhibit A, including any alterations as the Court deems necessary; approve the Discovery Notice attached hereto as Exhibit B; and grant such other relief as this Court deems just and proper.

Dated: July 16, 2021
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

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CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer